

***Remarks***

Reconsideration of this Application is respectfully requested. Claims 1-33 and 35-39 are pending in the application, of which claims 1, 13, 25, and 31 are independent. By the foregoing Amendment, claims 3, 8-13, 20-24, 31, and 35-39 are sought to be amended. Claim 34 is sought to be cancelled without prejudice or disclaimer. No new matter is embraced by this amendment and its entry is respectfully requested. Based on the above Amendment and the remarks set forth below, it is respectfully requested that the Examiner reconsider and withdraw all outstanding objections and rejections.

***Claim Objections***

The Examiner, on page 2 of the Office Action, has objected to claims 8-12, 20-24 and 35-39 because of some informalities. Applicants have amended claims 8-12, 20-24, and 35-39 to overcome this objection. Based on the claim amendments made in this Response, Applicants respectfully request that the Examiner withdraw the claim objections.

***Rejections under 35 U.S.C. § 112***

The Examiner, on page 3 of the Office Action, has rejected claims 3 and [4] based on lack of antecedent basis for the term “the required platform”. Applicants have amended claim 3 to recite “a required platform”. Applicants, therefore respectfully request that the Examiner withdraw this rejection.

***Rejection under 35 U.S.C. § 101***

The Examiner, on page 4 of the Office Action, has rejected claim 13 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. To overcome this rejection, Applicants have amended claim 13 to be written as a “computer readable medium encoded with computer executable instructions”. Applicants respectfully request that the Examiner withdraw this rejection.

***Rejection under 35 U.S.C. § 102***

The Examiner, on page 5 of the Office Action, states that claims 1-5, 10, 11, 13-17, 22, 23, 31-35, and 38 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application No. 2003/0135860 to Dureau. Applicants respectfully traverse this rejection. Based on the remarks set forth below, Applicants respectfully request that this rejection be reconsidered and withdrawn.

To anticipate a claim of a pending application, a single reference must disclose each and every element of the claimed invention. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1397 (Fed. Cir. 1986). The exclusion of a claimed element from the single source is enough to negate anticipation by that reference. *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 750 F.2d 1569, 1574 (Fed. Cir. 1984).

With respect to independent claim 1, the Examiner states that Dureau teaches each and every element of the claim. Applicants respectfully disagree.

Contrary to the present invention, Dureau does not teach or suggest every element of Applicants’ invention. For example, referring to independent claim 1, Dureau does not teach or suggest at least the following claimed element: “determining whether the media

item needs intelligent transcoding to be played on the particular rendering device, wherein if the media item needs intelligent transcoding, then intelligently transcoding the media item, wherein intelligent transcoding includes one or more of transcoding, transcaling, transrating, transformatting, and transcribing.”

The Examiner admits that Dureau does not teach transcribing and transrating in his 103 rejections on pages 8 and 9 of the Office Action. Therefore, Dureau cannot teach Applicants’ element of: “determining whether the media item needs intelligent transcoding to be played on the particular rendering device, wherein if the media item needs intelligent transcoding, then intelligently transcoding the media item, wherein intelligent transcoding includes one or more of transcoding, transcaling, transrating, transformatting, and transcribing,” which includes transcribing and transrating.

For at least these reasons, Applicants respectfully submit that Dureau does not teach each and every element of Applicants’ claimed invention recited in independent claim 1. Independent claims 13 and 31 also include a similar element to that recited in claim 1. Therefore, independent claims 1, 13, and 31, and the claims that depend therefrom (claims 2-12, 14-24, and 32, 33, and 35-39, respectively), are patentable over Dureau. Reconsideration and withdrawal of this rejection is respectfully requested.

***Rejection under 35 U.S.C. § 103***

The Examiner states, on page 8 of the Office Action, that claims 12, 24, and 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. 2003/0135860 to Dureau in view of U.S. Patent Application No. 2003/0126086 to Safadi.

Claims 12, 24, and 39 depend from independent claims 1, 13, and 31, respectively, which are patentable over Dureau for at least the reasons stated above. Furthermore, Safadi does not teach or suggest all of the features missing from Dureau. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of dependent claims 12, 24, and 39.

The Examiner, on page 8 of the Office Action, states that claims 6-8, 18-20, and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. 2003/0135860 to Dureau in view of U.S. Patent Application No. 2002/0069218 to Sull *et al.*

Claims 6-8, 18-20, and 36 depend from independent claims 1, 13, and 31, respectively, which are patentable over Dureau for at least the reasons stated above. Furthermore, Sull *et al.* does not teach or suggest all of the features missing from Dureau. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of dependent claims 6-8, 18-20, and 36.

The Examiner, on page 9 of the Office Action, states that claims 9, 21, and 37 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. 2003/0135860 to Dureau in view of U.S. Patent No. 6,959,116 to Sezer *et al.*

Claims 9, 21, and 37 depend from independent claims 1, 13, and 31, respectively, which are patentable over Dureau for at least the reasons stated above. Furthermore, Sezer *et al.* does not teach or suggest all of the features missing from Dureau. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of dependent claims 9, 21, and 37.

The Examiner, on page 10 of the Office Action, states that claims 25, 26, 29, and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. US 2003/0135860 to Dureau in view of U.S. Patent No. 6,581,102 to Amini *et al.* Applicants respectfully disagree. Based on the remarks set forth below, Applicants respectfully request that this rejection be withdrawn.

With respect to independent claim 25, Dureau does not teach or suggest at least the element of: “a transport manager to gather information from the policy manager, to determine network throughput and platform usage required to perform intelligent transcoding, and to communicate with an application to provide device characteristics and policy information to a graph manager, wherein intelligent transcoding includes one or more of transcoding, transcaling, transrating, transformatting, and transcribing to transform a media format from a service provider to another media format for a rendering device for playing media on the rendering device,” for the reasons stated above. Furthermore, Amini *et al.* does not teach or suggest these features missing from Dureau.

For at least these reasons, independent claim 25, and the claims that depend therefrom (claims 26, 29, and 30), are patentable over Dureau and Amini *et al.* Applicants respectfully request that the Examiner reconsider and withdraw this rejection.

The Examiner, on page 11 of the Office Action, has rejected claims 27 and 28 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. 2003/0135860 to Dureau and U.S. Patent No. 6,581,102 to Amini *et al.* in view of U.S. Patent Application No. 2004/0207724 to Crouch *et al.*

Claims 27 and 28 depend from independent claim 25, which is patentable over Dureau and Amini for the reasons stated above. Furthermore, Crouch *et al.* does not

teach or suggest all of the features missing from Dureau and Amini. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of dependent claims 27 and 28.

***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all currently outstanding objections and rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Response is respectfully requested.

Respectfully submitted,

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